MONTANA LEGISLATIVE HISTORY

Chapter 341 19 69

Bill H 174 S _____ Original bill & history No C

H. Committee on Public Health Welfare & Safety		S. Committee on State Administration	
Hearing Date(s) Feb 04	✓ C	Hearing Date(s) Feb 24	✓ C
_____	____ C	Feb 26	✓ C
_____	____ C	Feb 27	✓ C
_____	____ C	_____	____ C
Date Out Feb 04	✓ C	Feb 27	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

February 4, 1969

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE PROCEEDINGS

The committee on Public Health, Welfare and Safety met in Room 428A, at 8:00 AM, on Tuesday, February 4, 1969. Chairman Asbjornson presided. All members were present.

HOUSE BILL #254 -- SPONSOR: Ralph Eggebrecht, Representative, District 4, told the committee he had put this bill in by request and after it had been interpreted to him a little differently, it could cost the counties a lot of money. He recommended that it be pulled and the committee give it a do not pass.

Mr. Campbell moved that the committee rescind their action in giving House Bill #254 a Do Pass. Mr. Feda seconded. Motion carried.

Dr. Cashmore moved that the committee report House Bill #317 out DO NOT PASS. Mr. Feda seconded. Motion carried.

Dr. Cashmore moved that the committee report out House Bill #314 DO NOT PASS. Mr. Campbell seconded. Motion carried.

HOUSE BILL #174 -- SPONSOR: Representative Cashmore told the committee that Tom Dowling, member of the Safety Code Commission, would testify.

PROPONENTS:

Tom Dowling, representing the Safety Commission, said this bill rose out of a piece of legislation enacted last session, wherein a committee was appointed to study laws of Montana relating to safety and make recommendations to the Legislature. The safety act recognizes that the existing Montana statutes are inadequate. There is no provision for hearings or for due process or investigation by anyone in authority. Union employees also recognize safety is important to them, if they lose time on the job they lose money. There appears to be some antagonism between employer and employee; employees feel the employer doesn't care about safety; employers feel the employees won't use what they supply for safety, such as hard hats, etc. They want voluntary compliance with laws of the State of Montana to benefit both employers and employees. They looked at statutes of other states and the Oregon legislation appeared very good and worked very well. Discretion will be invested in the 3 member group and they will appoint a director of safety who will have a great deal of discretion. Section 10 deals with hearings; after a hearing the board orders that it be made safe and specifies a time in which this must be remedied. Section 11 contemplates an inspection; the safety director can inspect places of employment from time to time. In a violation of code, rule or regulation that everyone knows about or should know about, they can stop the use. Section 13 covers summary closure; this exists in Montana Law; the safety inspector can come into any business and close it down and there is no recourse. If you are an employer, this will take a lot of time. This Section 13 provides that within 24 hours of the closure there must be a hearing and a decision by the Board either affirming or disaffirming. It further provides a whole job cannot be shut down, only that portion that creates an imminent danger. Section 14 deals with review by the courts and provides for rehearing. The Board gets all the information, it makes it record and if it goes to court, goes up on that record so that the Board has ample opportunity to render judgment.

John Morrison, representing Morrison-Maierle Company, said if they can get something in the statutes that will require each and every contractor, small or large, to be cognizant of the fact that he is responsible for the safety of his workmen and proper action be taken, and requiring weekly or bi-weekly meetings of labor and management and those in charge of inspection of the work, they may be able to do something about safety.

R. L. Brown, representing Anaconda Company, said the commission who worked so long and hard developing this bill should be commended. It is designed to attack what is a problem in the State of Montana. At every location they have safety engineers who do nothing but insure that safety rules are observed. He proposed four amendments to the committee and discussed them briefly.

Mr. Swanberg, Chairman of Industrial Accident Board, was a member of the commission which considered this legislation, and said generally speaking, the legislation is quite similar to law we now have, however, it does incorporate some improvements over our existing law.

Wes Banta, who acted as chairman of the commission, said Mr. Dowling had covered it very well. They delved into every facet of safety that came up and tried to notify everyone who had any interest at all. Everyone really tried to get provisions in there that would make jobs more safe in the state.

Bill Williams, representing the ACM Company, said he had no added comments, that he did believe they had a worthwhile piece of legislation.

Tony Softich, said he concurred with all the statements made by other members of the commission.

Mr. Hartzee, representing labor, said they did have a cross representation on the committee.

G. L. Hammond, representing AFSCME of Montana AFL-CIO, said he sat in on most of these meetings and there was a reasonable cross section of industry and labor and did believe they had come up with something that is needed.

Jim Murry, representing Montana AFL-CIO, said they concur with the intent of this legislation and that a lot of hard work had gone into it. He felt that even with good legislation there might tend to be the problem they have had in the past in the area of enforcement. They hope this new board and this new act will see that there is an adequate number of people in the field enforcing it.

Robert N. Helding, General Counsel for St. Regis Paper Company and appearing on behalf of that company and the lumber industry and said they supported the amendments Mr. Brown submitted.

Ben Havdahl, representing Montana Petroleum Association, said they fully support the amendments and they wished to register their official endorsement of the commission's action.

Dr. Cashmore closed by saying it was a real pleasure to present to the committee a bill that is supported by management, the Chairman of the Industrial Accident Board, the Commissioner of Labor and the head of one of the largest engineering firms in Montana. He said those facts speak for themselves.

Witnesses were excused.

HOUSE BILL #404 -- SPONSOR: Earl Cranston, Representative, District 9, said there are no other witnesses. This is a companion bill to HB 376 which is the creation of a State Board of Eugenics. This bill merely repeals the present Board of Eugenics, a non-operative board at this time but still on the books and is considered quite harsh in its scope. The main purpose is to authorize involuntary sterilization of the mentally retarded confined in an institution such as Warm Springs. This is to repeal the old section of the act and that this bill and HB 376 should be considered together.

HOUSE BILL #403 -- SPONSOR: Earl Cranston, Representative, District 9, said this is a bill which is basically designed to strengthen local City and County Boards of Health and provide for a joint sewer hookup at the edge of the city for sewage disposal.

PROPONENTS:

Vernon Sloulin, representing State Department of Health, said this is just another housekeeping bill through the complete revision of their Board of Health Law. Has been drafted to change the number of members of boards of health, establish specific terms of office for them, and clarify Section 39-4509, Sub-section i, gives authority to local board to abate nuisances affecting public health and they are adding safety. Last change permitted local boards to adopt regulations and fees for sewage disposal from buildings not now connected to municipal disposal systems. Local attorneys tell them the law in its present form is not clear enough to have boards go ahead and adopt this.

Dr. Anderson, representing the State Department of Health, said he is in support of the bill; he thinks it is a good one. There are still some questions in this law and they may have to come back next session for clarification.

Discussion followed. Witnesses were excused.

The committee discussed the amendments on HB 174. Dr. Cashmore moved that this bill be reported out DO PASS, AS AMENDED, with these amendments. Motion seconded. Dr. Cashmore withdrew his motion as it was decided they should vote on the amendments. Dr. Cashmore moved that the amendments to House Bill 174 be approved. Mr. Campbell seconded. Motion carried. Dr. Cashmore moved that House Bill 174, DO PASS, AS AMENDED WITH THESE AMENDMENTS. Motion seconded. Motion carried.

Mr. Feda moved that House Bill #403 DO PASS. Mr. McCulloch seconded. Motion carried.

Mr. Cranston moved that House Bill #404 DO PASS. Mr. Campbell seconded. Motion carried.

Mr. Cranston moved that House Bill #376 also BE PASSED and that 404 and 376 be kept together. Mr. Shively seconded. Motion carried.

HOUSE BILL #431 -- SPONSOR: Jeff Scott, Representative Yellowstone County, said this has to do with establishing an intensive rehabilitation center at the Montana State Prison.

PROPONENTS:

Mr. Ed Kelner, Director of Department of Institutions, said the Department of Institutions is under a court order to come up with a plan that will enable compliance with a statute on the books of segregating younger prisoners from prisoners 21 or over. House Bill 66 is designed to repeal this requirement and it has already passed the House. He said this is the first step in the plan that they have and they cannot comply with this requirement within the next two or three years under any circumstances. The establishment of what they call an intensive rehabilitation center, provided this bill passes, is the second step, third step is to ask the Legislature for money to construct this intensive rehabilitation center facility out on the ranch area West of Deer Lodge; there is a minimum facility there at the present time. The long range plan is to move the prison entirely from Deer Lodge out into this area. The prison is an antiquated facility, old and worn out; anything built as strongly as a prison cannot be remodeled. The first phase of the long range program would be to move the facility out to the "Rothy-Hall" area. They, at first, thought of calling this the "first offenders" facility but they decided it would be more reasonable to request a certain amount of flexibility in selecting the individuals to be placed in here; disregard age and number of offenses and just pick those individuals who would be most likely to benefit from this type of program. The facility would have a 100 cell block, there would be an academic building with adequate classrooms, area for vocational training in such things as auto mechanics, body work, carpentry, electrical, and various areas in which training might enable them to get and hold a job after they are released, which is basically what this is all about.

Discussion followed. Witnesses were excused.

Meeting adjourned.

J. O. Asbjornson, Chairman

Agnes M. Palmer, Secretary

HB #174

Mr. Chairman: I move to amend Section 6 (2) ~~by striking out in line~~ at page 3 of the Original Bill

by adding at the end of said section ~~and inserting in lieu thereof~~ the words

"The safety director shall be a person with at least two years' experience or training in the field of industrial safety."

3 47647

HB 174

Mr. Chairman: I move to amend Section 11 (1) by striking out in line 8 at page 6 of the Original Bill after the word "apparatus" the words "or place of employment"

and inserting in lieu thereof the words

3 47647

HB 174

Mr. Chairman: I move to amend Section 13 by ~~striking out in line~~

adding at the end

~~and inserting in lieu~~ thereof the words" Nothing in this section shall empower the Board or the Safety Director to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employeet or place of employment unless a specific rule adopted after pul lic hearing is violated."

3 47647

HB #174

Mr. Chairman: I move to amend Section 15 by striking out in line 16 at page 9 of the Original Bill after the word "party"

the words

"or person"

~~and inserting in lieu thereof the words~~

3 47647

Mr. Ulmer stated that the federal qualifications would only be imposed where federal monies were used for construction, subsidizing or insurance; this would include homes and other buildings.

HOUSE BILL 174 was explained by Representative Cashmore, who mentioned the Safety Code Commission appointed by the Governor and which composed this bill. Mr. Cashmore is a member of that group. He stated there are no general safety codes except in the oil and lumber industries, for example. He stressed the fact that both labor groups and management have worked together to draw up this bill and both are satisfied with it. No money from the state's general fund would be used; the funds of the Industrial Accident Board may be used. The fact that Montana ranks fourth highest in industrial accidents among the states, shows the need for an enforced uniform safety code.

Other PROPONENTS of the legislation were Mr. Tom Downing, member of the aforementioned commission and attorney who drew the bill; Mr. Jim Murray, Montana State AFL-CIO; Mr. Elton Hartze, member of the commission; Mr, Ben Haveal, Executive Director of the petroleum industry; Mr. Robert Helding, of St. Regis, representing the lumber industry of that area; Mr. Tony Softitch stated there is a bill before the federal government stipulating that the government shall enter in wherever a state has no existing safety codes in effect; Mr. Robert L. Rampy, President of Joint Council of Teamsters, stated the codes would be developed under the Industrial Accident Board, working with labor, management and industries; Mr. Hammond and Mr. Lou Brown. Mr. Downing submitted a proposed amendment to the bill which would be in addition to the amendment put in in the House of Representatives. Mr. Murray stated this amendment met with the approval of all concerned.

HOUSE BILL 303 - Representative Scott Stratton, District No. 18, Cascade County, explained this was a housekeeping bill providing an updating of regulations of dental practices, defining dental hygienists and bringing them under this act.

PROPONENTS: Dr. Richard C. Ritter, President of the Montana State Dental Association, stated there was nothing restrictive in this act which would make applicants want to go to another state and also stated that this bill changes the examination and relicensure fees. Dr. Henry B. Lorentz spoke in favor as did Dr. Jack Terrill and Mr. L. R. Hegland, Executive Secretary of the Montana State Dental Association. It was agreed among the committee and the witnesses that having only an annual examination is confining to someone from out of state who wishes to practice in Montana.

HOUSE BILL 494, sub-committee report by Senator Mitchell, included the committee hearing comments from Mr. Lillis L. Waylett and Mr. Harold J. Boyd, coordinator of the Department of Indian Affairs as well as the sponsor of the bill, Mr. Harlow. Mr. Waylett stated he is the elected President of the Helena Indian Alliance comprised of some 84 families in Helena; a charter member and director of the

Amendments to the per diem for those other than the Governor, setting the amounts at $13.50 and $22.50, to conform with a previous bill in the committee, were moved be adopted by Senator McKeon, seconded by Senator Mackay and carried.

Senator Rostad moved and Senator Mackay seconded that Senator McKeon be authorized to work with the Governor's office and use any necessary amendments to HOUSE BILL NO. 441, which had been discussed by the committee. The motion was duly carried.

HOUSE BILL NO. 174 BE NOT CONCURRED IN was moved by Senator Rosell, seconded by Senator Rostad and unanimously carried.

HOUSE BILL NO. 494 subcommittee report was made by Senator Mitchell. Two members of the Montana Tribal Council for Indians asked to be heard on the bill and were granted this consideration. Mr. Leslie Fourstar, from the Fort Peck Reservation and Mr. Mathew Two Moons, representing the Northern Cheyenne appeared as opponents to the bill, as they felt the off-reservation Indians should be considered only on a state wide basis. The Intertribal Policy Board was mentioned as not being utilized to the fullest. Mr. Fourstar stated that at present each of the seven reservations has one member and the off-reservation Indians have one vote on the council. The committee decided the proposed amendment made by the subcommittee would not be workable, whereupon Senator McKeon moved and Senator Lyon seconded HOUSE BILL NO. 494 BE NOT CONCURRED IN. The motion carried with two dissenting votes.

HOUSE BILL NO. 381, publication of state notices, was reported on by the subcommittee of Senator McDonald, who cited statistics showing that under this bill the cost of state printing would increase about two-fifths of the present cost. The committee felt the cost of county printing has increased too much under a like plan. Senator McKeon moved HOUSE BILL NO. 381 BE NOT CONCURRED IN, seconded by Senator Mitchell and unanimously carried.

HOUSE BILL NO. 301 was moved to be reconsidered by the committee by Senator Rosell and seconded, however, the motion was defeated.

HOUSE BILL NO. 176, Registrar of Motor Vehicle lists, was discussed with Senator Lyon requesting time to speak to Representative Bardanouve before the committee takes action. Senator McKeon moved that he and Senator Lyon be designated to speak with Representative Bardanouve and that the chair be bound to reporting HOUSE BILL NO. 176 BE NOT CONCURRED IN. The motion was duly seconded and carried.

February 27, 1969
7:30 a.m.

A regular meeting of the committee on State Administration was called to order on the above date in Room 410, by Chairman James. A quorum was present.

HOUSE BILL NO. 176, ~~which~~ lists the Registrar of Motor Vehicles, was further testified on by Representative Bardanouve, author of the bill. Representatives of R. L. Polk and Company: John Peterson, Robert Durkee, Jim Patton and Don Garrity also appeared.

Senator McKeon moved the committee reconsider its action taken on HOUSE BILL NO. 381. It was seconded by Senator Mackay and carried.

HOUSE BILL NO. 176 BE NOT CONCURRED IN was moved by Senator McKeon, seconded by Senator Rostad and carried.

HOUSE BILL NO. 494 was discussed again with Mr. Boyd, Coordinator of Indian Affairs, and Mr. Lillis Waylett. Mr. Tom Ryan, a proponent of the bill, also appeared. Mr. Minugh, of the Fort Belnap Reservation, appeared as a proponent of the bill and stated that he felt the National Indian Bureau isn't doing its duty by the Indian people and that it hasn't been possible for the Indian Coordinator to counteract this. Senator McKeon moved the amendments to the bill (see committee report, dated 2-27-69). Senator Rosell seconded the motion and it carried. Senator McKeon moved that HOUSE BILL NO. 494, AS AMENDED, BE CONCURRED IN. It was seconded by Senator Mackay and carried.

HOUSE BILL NO. 381 AS AMENDED BE CONCURRED IN was moved by Senator Rosell, seconded by Senator McKeon and carried, following the adoption of the amendments on a motion by Senator McDonald. This was seconded by Senator Mackay and carried.

HOUSE BILL NO. 174 was reconsidered and moved by Senator Rosell. The motion was seconded by Senator McKeon and carried. HOUSE BILL NO. 174 AS AMENDED, BE CONCURRED IN was moved by Senator McKeon and seconded by Senator Rosell. The motion was carried.

APPOINTMENTS: The Air Polution Council was segregated, as was the Fish and Game Commission. Senator McKeon then moved that all nominations as indicated by Governor Anderson, be confirmed, except for those which were previously segregated. The motion was seconded by Senator Lyon and carried. The secretary was instructed to prepare a committee report showing all those not confirmed by the committee.

(4) a signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a), or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

Section 7. **Rights and duties at death.** (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certifies the death. The physician who tends the donor at this death, or if none, the physician who certifies the death, shall not participate in the procedures for removing or transplanting a part.

(c) The provisions of this act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

Uniformity of interpretation.

Section 8. **Uniformity of interpretation.** This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Uniform Anatomical Gift Act.

Section 9. **Short title.** This act may be cited as the Uniform Anatomical Gift Act.

Repealing clause.

Section 10. **Repeal.** Sections 69-2311, 69-2312, 69-2313 and 69-2314, R.C.M. 1947, are repealed.

Approved: March 13, 1969.

CHAPTER NO. 341

An Act to Provide a Safety Code for the State of Montana, Establishing a Department of Safety, Providing for a Safety Director to Be Appointed by the Industrial Accident Board, Providing That the Industrial Accident Board Have Supervision Over Every Place of Employment and Full Power to Enforce All Laws and Orders Concerning Safety in Places of Employment, Prescribing Methods for Enforcement and Administration of This Act; Amending Section 92-101, R.C.M. 1947; and Repealing Sections 41-1701 Through 41-1707, 92-1201 Through 92-1210 and 92-1214 Through 92-1222, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

"Montana Safety Act."

Section 1. This act may be cited as the "Montana Safety Act."

Section 2. Unless context requires otherwise, in this act:

"Board."

(1) "Board" means the industrial accident board of the state of Montana.

"Employer."

(2) "Employer" is defined as in section 92-410, R.C.M. 1947.

"Code."

(3) "Code" means a standard body of rules for safety formulated, adopted and issued by the board under the provisions of this act.

"Employee."

(4) "Employee" and "workmen" are defined as in section 92-411, R.C.M. 1947.

"Amendment."

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

"Variation."

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

Safety procedures.

Section 3. Every employer shall furnish a place of employment which is safe for employees therein, and shall furnish and use, and require the use of, such safety devices and safeguards, and shall adopt and use such

practices, means, methods, operations and processes as are reasonably adequate to render the place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of employees.

Unsafe place of employment.

Section 4. An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

Every employer who is the owner of a place of employment or lessee thereof, shall repair, and maintain the same as to render it safe.

Failure to use safety devices.

Section 5. No person shall remove, displace, damage, destroy or carry off or refuse to use any safety device or safeguard furnished and provided for his use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment, or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

Powers and duties of board.

Section 6. In the administration of this act the board:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall establish a department of safety under the supervision of a safety director, to be appointed by the board ,to carry out the provisions of this act. The safety director shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May make, establish, promulgate and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may

be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the board shall provide for defraying the expenses thereof.

Attendance of witnesses.

Section 7. (1) The board or any member thereof, before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the board.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why he has not attended and testified or produced the papers before the board or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the board or member thereof, the court thereupon shall enter an order that the witness appear before the board or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court.

Powers of board after hearing.

Section 8. The board may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

Notice of hearing.

Section 9. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the board shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the board may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the board after the hearing.

Orders of board pertaining to safety.

Section 10. Whenever the board, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The board may in the order direct that such addi-

tions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order.

Prohibition of use—notice.

Section 11. (1) The board or authorized representative thereof with the approval of the board, or the safety director, upon finding any violation of any duly promulgated safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safey appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the board, or who fails or refuses to file a report of accident as required by section 92-808, R.C.M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars ($1,000). The civil penalty may be imposed and collected by the board in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs workmen. Any penalty collected under this subsection shall be paid into the industrial accident administrative earmarked revenue account.

Any person aggrieved by an order prohibiting the use

of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the board within twenty(20) days after entry of such order. The board shall then affirm, modify or revoke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

In addition to all other remedies provided in this act, the board may bring an action to enjoin any violation of any duly promulgated safety order, code or rule.

Time for compliance.

Section 12. The board shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the board for an extension of time, which the board shall grant if it finds the extension of time necessary.

Closing unsafe places of employment.

Section 13. The board or authorized representative thereof, with the approval of the board, or the safety director, may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workmen employed therein. Upon issuance of any such order, the board or safety director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order. Nothing in this section shall empower the safety director to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or places of employment for which no code has been adopted and where it is found by the safety director that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen there employed, the safety director may

order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the board.

Judicial review.

Section 14. (1) The orders of the board, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the board and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the board. Within ten (10) days after the receipt of the notice, the board shall file with the clerk of court the record of proceedings before the board, including a transcript of all the evidence adduced upon the hearing and any rehearing before the board. The district court, on application for good cause shown, may extend the time within which the board shall file the record, transcript and evidence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the board.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The board acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

Review by board.

Section 15. Any party aggrieved directly or indirectly by any final order, decision or rule of the board made or entered pursuant to this act may apply to the board within twenty (20) days after the order of the board for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act.

Application for rehearing to contain.

Section 16. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the board.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the board may require the application for rehearing to be served on such parties as may be designated by the board.

Board procedure upon rehearing.

Section 17. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the board, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the board shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the board may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the board shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the board shall abrogate, change or modify the same.

(4) An order or decision made afer the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not effect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the board.

(5) An application for rehearing is considered denied by the board unless it has been acted upon within thirty (30) days from the date of filing; provided that the board may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days.

Inspection by board.

Section 18. (1) The board shall inspect from time to time all the places of employment defined in the Montana Workmen's Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the board and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the board, or by the board or a member of the board in the course of a hearing or proceeding.

Notice to employer.

Section 19. (1) A workman shall notify his employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the workman.

(2) If the employer fails to remedy the violation, the

workman may complain in writing to the board of the violation.

(3) Upon receiving the complaint the board shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

Safety codes.

Section 20. (1) In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the board may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for administering worker safety programs, and other accepted codes. Any amendments made to such codes by the board shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take affect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the board may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the board under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time.

Consultation with board.

Section 21. Any employer may consult with the board for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of

practical difficulties, the board may grant variations from particular provisions of the code and permit the use of other or different devices or methods; provided, however, that such variations shall be granted only when it is clear that the reasonable safety of the workers in said plant or place of employment is not thereby endangered. In any case where the board shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this act. A properly indexed record of all variations made shall be kept in the office of the board and be open to public inspection.

Safety studies.

Section 22. The board may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media,

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisors who shall be compensated by the board if necessary, and who shall assist the board in establishing standards of safety. The board may adopt and incorporate in its orders such safety recommendations as it may receive from such advisors.

Violation—penalty.

Section 23. In addition to all other penalties herein provided: Every employer, workman or other person, who, either individually or acting as an officer, agent, or employee of a corporation or other person, violates any safety provision of this act, or who, directly or indirectly, knowingly induces another to do so is guilty of a misdemeanor.

Compliance by contractors.

Section 24. Every contractor performing services for the state of Montana or any political subdivision thereof, shall be required to comply with the safety rules, codes and provisions of this act, as a part of his contract.

Existing buildings.

Section 25. Nothing contained in this act shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good

condition, are properly safeguarded, and conform to the applicable safety standards required by Montana Safety Codes effective prior to the effective date of this act, and provided that replacements and alterations shall conform to all provisions of this act.

Cooperation with state board of health.

Section 26. The board shall report occupational health hazards discovered in its investigations and inspection of places of employment to the state board of health and shall cooperate with the state board of health in carrying out its duties as specified in title 69, chapter 42, R.C.M. 1947.

Saving clause.

Section 27. If any of the provisions of this act are declared or held to be invalid or unconstitutional, such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid.

Section 28. There is added to title 92, chapter 11, R.C.M. 1947, a new section numbered 92-1105.1 which reads as follows:

Increased premium rate.

"92-1105.1. If by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of the Montana Safety Act, and such employer shall be under compensation plan number 3, the board, in addition to any other penalty provided, shall advance the rate upon such place of employment fifty (50) per cent, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment and such employer shall have obtained a certificate of the board."

Amending clause.

Section 29. Section 92-101, R.C.M. 1947, is amended to read as follows:

Workmen's Compensation Act.

"92-101. **Name of act—what each part to contain.** This act shall be known and may be cited as the Workmen's Compensation Act. Part I (sections 92-101 to 92-843) shall contain those sections which have a general application to the whole of the act, and may be referred to as the 'general provisions'; part II (sections 92-901 to 92-908) shall contain those sections which refer to compensation

plan number one; part III (sections 92-1001 to 92-1012) shall contain those sections which refer to compensation plan number two: part IV (sections 92-1101 to 92-1123) shall contain those sections which refer to compensation plan number three."

Repealing clause.

Section 30. Sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R.C.M. 1947, are repealed.

Approved: March 13, 1969.

CHAPTER NO. 342

An Act to Amend Section 11-1932, R.C.M. 1947, to Increase the Minimum Compensation of Firemen in Cities of the First and Second Class.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 11-1932, R.C.M. 1947, is amended to read as follows:

Minimum wages of firemen in cities of first and second class.

"11-1932. **Minimum wages of firemen in cities of first and second class.** From and after July 1, *1969*, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least *five hundred twenty-five dollars ($525)* per month for the first year of service, and thereafter of at least *five hundred twenty-five dollars ($525)* minimum per month plus one per cent (1%) of said minimum base monthly salary *five hundred twenty-five dollars ($525)* for each additional year of service up to and including the twentieth year of such additional service. *From and after July 1, 1969, there shall be paid to each duly appointed and confirmed member of the fire department of cities of the second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work, of at least four hundred seventy-five dollars ($475) per month for the first year of service, and thereafter of at least four hundred seventy-five dollars ($475) minimum per month plus one per cent (1%) of said minimum base monthly salary of four hundred seventy-five*